



# Supreme Court of the United States.

No. 381, 382, 383, 384, and 385.—OCTOBER TERM, 1905.

- 381      Lewis M. Alexander, Appellant,  
              *vs.*  
              The United States.
- 382      George A. Whiting, Appellant,  
              *vs.*  
              The United States.
- 383      William Z. Stuart, Appellant,  
              *vs.*  
              The United States.
- 384      General Paper Company, Appellant,  
              *vs.*  
              The United States.
- 385      E. T. Harmon and General Paper Company,  
              Appellants,  
              *vs.*  
              The United States.

} Appeals from the Circuit  
Court of the United  
States for the Eastern  
District of Wisconsin.

[March 12, 1906.]

Mr. Justice McKENNA delivered the opinion of the Court.

At the very beginning we encounter a question of jurisdiction. Are the orders of which the appellants complain appealable? The orders direct the appellants respectively to appear before Robert F. Taylor, special examiner in the case, at the time and place to be designated, and directs each of them to "answer each and every question put to them respectively by the counsel for the complainant, the United States of America," and to produce before such commissioner certain books, papers, records, documents, reports and contracts, "for the purpose of their respective examination in said cause, and for use in evidence of the complaint of the United States of America in said examination." And it is ordered that the complainant's counsel shall have the right to inspect the said books, etc., and to introduce them or any of them in evidence; but, except as necessary for such purposes, the books, etc., to remain in the custody of the appellants.

A brief statement of the proceedings is all that is necessary. The United States by its proper officers brought suit in the Circuit Court of

the United States for the District of Minnesota against the General Paper Company and twenty-three other corporations, defendants, under and pursuant to the provisions of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies." It is alleged in the bill that the defendants, other than the General Paper Company and the Manufacturers' Paper Company, were engaged in the manufacture of manilla and fibre papers in active competition with one another, and that they entered into an agreement, combination and conspiracy to control, regulate and monopolize, not only the manufacture of news print, manilla, fibre and other papers, but also the distribution and shipment thereof among and throughout the Middle, Southern and Western States. The General Paper Company was the means employed to execute the combination and conspiracy. That company is a corporation organized, the bill alleges, by the other defendants, under the laws of the State of Wisconsin, with a capital stock of \$100,000, divided into one thousand shares, which were distributed among and owned and held by the other defendants, in proportions based upon the average daily output of the mills of each defendant. It is authorized to become at its principal place of business the sales agent of the products of the defendants' mills in the State of Wisconsin and elsewhere. Absolute power is conferred upon it to control and restrict the output of the mills, fix the price of their products, and determine to whom and the terms and conditions upon which such products shall be sold, into what States and places they shall be shipped, and what publishers and customers each mill shall supply.

The Manufacturers' Paper Company, it is alleged, is a New York corporation, with its principal place of business in Chicago, and from about the year 1897 to 1902, acted as the sales agent of various manufacturers of paper for the sale of news print and other papers; that in 1902 it became a party to the combination and conspiracy alleged in the bill and agreed with the General Paper Company not to compete with it in certain territories.

It is admitted that, prior to the formation of the General Paper Company, the other defendants except the Manufacturers' Paper Company, were in active competition. The formation of the General Paper Company is also admitted and that it became, by contract with the defendants who manufacture paper, their selling agent. The defendants deny, however, a purpose to violate the act of July 2, 1890. The violation of that law is the issue in the case, and the bill prays an injunction against the defendants and their officers from doing the acts or executing the purpose charged against them.

In trial of the issue thus made the Circuit Court appointed Robert S. Taylor special examiner, with authority to hear and take testimony within

and without the District of Minnesota, and made an order fixing the time to take the testimony for the United States the 16th of May, 1905, at the city of Milwaukee, State of Wisconsin. The order was duly served on the counsel of the respective parties. Thereupon the United States petitioned the Circuit Court for an order directing the clerk of the Circuit Court to issue a *subpoena duces tecum*. The subpoena was duly issued and served on the appellants as individuals and as officers of certain of the defendant companies. They appeared before the examiner in obedience to the subpoena, but, under the advice of counsel, they refused to permit the use of books or certain parts of them, and refused to answer certain questions put to them, the ground of this action being the immateriality and irrelevancy of the evidence sought to be adduced. The United States then presented a petition to the United States Circuit Court for the District of Wisconsin, which recited the issues in the case and the statement of the questions asked and the parts of the books and documents sought to be used. To this petition the appellants filed separate answers.

The answers may be regarded for our present purpose as identical. They allege the immateriality of the evidence and that its materiality should be established as a condition precedent to its production; that they are officers of the companies, and as such officers, the custodians of the books, papers and documents, and that the same are of interest and value to the company in its business, and the company forbids their production; that the United States seeks evidence to convict the company and the individual appellants of violations of the act of July 2, 1890, to annul the contracts and agreements of the company, and subject it and the other appellants to the penalties prescribed in that act, and to compel the company and the other appellants to furnish evidence against themselves, contrary to the provisions of the Fifth Amendment to the Constitution of the United States, which provides that no person shall be a witness against himself; also contrary to the Fourth Amendment of the Constitution of the United States, which provides that the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated. It is also said that the alleged acts of the paper company complained of in the original petition of the United States and which the United States is endeavoring to establish would, if committed by the company, be violations of the laws of Wisconsin, and would subject the company to forfeiture of its charter and other penalties under said laws, and to compel it through its officers to produce the books and documents sought would be to compel it to furnish evidence tending to establish that it has violated the law of the State, and such purpose is contrary to the provisions of the Fourth and Fifth Amendments of the Constitution of the United States.

As we have said, the court entered orders requiring the appellants to answer the questions put to them and to produce the books, papers and documents requested. Appeals were allowed to this court. To justify the appeals, appellants contend that the orders of the Circuit Court constitute practically independent proceedings and amount to final judgments. To sustain the contention, *Interstate Commerce Commission v. Brimson*, (154 U. S. 447,) and *Interstate Commerce Commission v. Baird*, (194 U. S. 25,) are cited.

Those cases rested on statutory provisions which do not apply to the proceedings at bar, and, while there may be resemblances to the latter, there are also differences. In a certain sense finality can be asserted of the orders under review, so, in a certain sense, finality can be asserted of any order of a court. And such an order may coerce a witness, leaving to him no alternative but to obey or be punished. It may have the effect and the same characteristic of finality as the orders under review, but from such a ruling it will not be contended there is an appeal. Let the court go farther and punish the witness for contempt of its order, then arrives a right of review, and this is adequate for his protection without unduly impeding the progress of the case. Why should greater rights be given a witness to justify his contumacy when summoned before an examiner than when summoned before a court? Testimony, at times, must be taken out of court. In instances like those in the case at bar the officer who takes the testimony, having no power to issue process, is given the aid of the clerk of a court of the United States; having no power to enforce obedience to the process or to command testimony, he is given the aid of the judge of the court whose clerk issued the process, and if there be disobedience of the process, or refusal to testify or to produce documents, such judge may "proceed to enforce obedience . . . or punish disobedience in like manner as any court of the United States may proceed in case of disobedience to like process issued by such court." (Sections 868, 869, Revised Statutes.) [This power to punish being exercised the matter becomes personal to the witness and a judgment as to him. Prior to that the proceedings are interlocutory in the original suit.] This is clearly pointed out by Circuit Judge Van Deventer, disallowing an appeal from an order like those under review, in the case of *Nelson v. United States*, (No. 490,) in error to the Circuit Court of the United States for the District of Minnesota. The learned judge said:

"I am of opinion that the mere direction of the court to the witnesses to answer the questions put to them and to produce the written evidence in their possession is not a final decision; that it more appropriately is an interlocutory ruling or order in the principal suit, and that if the witnesses refuse to comply with it and the court then exercises its authority either to punish them or to coerce them into compliance that will give rise to another case or cases to which the witnesses will be parties on the

one hand and the Government, as a sovereign vindicating the dignity and authority of one of its courts, will be a party on the other hand. I have no doubt that a judgment adverse to the witnesses in that proceeding or case will be a final decision and will be subject to review by writ of error, but not by appeal. My opinion is also that the parties to the principal suit cannot appeal or obtain a writ of error from that decision."

See also *Logan v. Penn. R. R. Co.*, (132 Pa. St. 403, 410.)

This court having no jurisdiction, the appeals must be dismissed, and

*It is so ordered.*

True copy.

Test:

*Clerk Supreme Court, U. S.*